

DECISION



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Lieberman
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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-204351

DATE: February 23, 1982

MATTER OF: G.T. Murphy, Inc.

DIGEST:

1. GAO will not consider protest which objects to Small Business Administration (SBA) size determination because SBA is empowered by statute to make conclusive determination regarding the size status of bidders.
2. Where a low bidder has verified a bid containing a price for an additive item significantly lower than those of other bidders, the contracting officer properly considered the bid as originally submitted. Second low bidder's contention that low bidder is required to prove that no mistake was made is rejected, absent circumstances not present here.
3. Agency is not required to advise bidder with protest pending before agency of its intention to make an award prior to doing so.

G.T. Murphy, Inc. (Murphy), protests the award of a contract to Shirley Contracting Corporation (Shirley) under invitation for bids (IFB) No. N62477-79-B-0426, a small business set-aside, issued by the Navy for the rehabilitation of certain on-base housing at the Quantico Marine Corps Base. Murphy's primary allegation is that Shirley's bid contained an obvious error with respect to price which required the contracting officer to reject the bid. We disagree, and we deny the protest.

The IFB included one basic item for the rehabilitation work, plus three additional items, with award to be made to one bidder. The following chart indicates the bids of the parties and the Government estimates:

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	<u>Item 1</u>	<u>Item 2</u>	<u>Item 3</u>	<u>Item 4</u>
Shirley	\$1,232,000	\$ 68,000	\$52,000	\$14,000
Murphy	1,188,000	82,000	58,000	64,500
Government Estimate	1,632,700	118,400	43,000	69,850

The other bid prices for item 4 ranged from \$45,090 to \$84,000. Shirley's total bid of \$1,366,000 was low, and Murphy's total bid of \$1,392,500 was next low.

Murphy initially protested to the contracting officer alleging that Shirley was not a small business, that Shirley was not a responsible bidder, that Shirley did not intend to perform certain work required under the contract, and that Shirley's bid for item 4 contained an obvious mistake which required the contracting officer to reject the bid. Murphy requested that the contracting officer advise Murphy if the Navy intended to award a contract to any other bidder at least 2 days prior to award.

The Navy awarded the contract to Shirley without giving Murphy advance notice. Murphy filed the protest here, complaining about the same protest bases before the contracting officer and the Navy's failure to provide advance notice of the award. After receipt of the agency's protest report, Murphy dropped its allegations regarding Shirley's responsibility and Shirley's intention to perform the required work.

With respect to Shirley's small business status, the Small Business Administration (SBA) regional office found Shirley to be a small business, and the SBA Size Appeals Board denied Murphy's appeal. Murphy objects that the Board decision is "unresponsive to the points raised in Murphy's appeal and in no way justifies the Board's conclusions." Our Office generally does not review a size status determination absent a prima facie showing of fraud or bad faith, or misapplication of regulations, because SBA is empowered under 15 U.S.C. § 637(b)(6) (1976) to conclusively determine the size status of bidders. Roy Anderson, Jr., Inc., B-204093, September 4, 1981, 81-2 CPD 200. Since no such showing has been made here, we will not consider this aspect of the protest.

Regarding the alleged mistake, by letter the Navy queried Shirley about the apparent item 4 price discrepancy in its bid. The letter contained a copy of the bid abstract and indicated that Shirley's item 4 bid price was considered to be substantially out of line with the Government estimate and the other bids. Shirley was advised to review its bid worksheets for possible errors or omissions. Shirley was advised that if the bid price was correct, it should provide written verification and include a statement waiving any claim of bid mistake after award. If Shirley determined that an error had been made and it wished to withdraw the bid, it was advised to submit a written statement indicating the nature and cause of the error, along with the original worksheets. Shirley confirmed its bid as submitted and waived any mistake claim after award.

The Navy asserts that this request and Shirley's confirmation were sufficient to accept Shirley's bid. Murphy contends that the procedure was insufficient, and that the contracting officer was required to determine that Shirley's bid for item 4 was without error, independent of Shirley's confirmation, citing H. Martin Construction Company, B-201352, April 8, 1981, 81-1 CPD 268.

Martin also involved an apparently mistaken additive item price in the low bid which constituted a small part of the total contract price. Martin originally bid \$15,000 for the additive item, and then sent a modifying telegram deducting \$13,000 from that amount. Shortly after bid opening, the agency received a telephone call from a person, identifying himself as a Martin employee, who stated that the telegram should have increased rather than reduced the item price by \$13,000. There was a dispute regarding this phone call, and Martin subsequently verified its \$2,000 bid. The agency concluded that the bid was mistaken in view of the phone call and the price changes and because of other factors (e.g., significantly higher other bid prices and Government estimate) indicating that \$2,000 was not a reasonable price for the item. Since adding \$13,000 to the price would have rendered the bid no longer low, the bid was rejected by the agency and award was made to the next low bidder. Our Office concluded that the agency reasonably determined that the bid was mistaken, citing the general principle that if an error is obvious

on the face of a bid, it may not be accepted even after verification. Martin relied on 51 Comp. Gen. 498 (1972), which reached a similar result.

In those and similar cases, we were precluding low bidders making obvious errors from deciding their competitive standing after bid opening, by either claiming that the bid was correct as submitted, or that a mistake had been made. See Hanauer Machine Works, B-196369, March 6, 1980, 80-1 CPD 178; RAJ Construction, Inc., B-191708, March 1, 1979, 79-1 CPD 140. The factual situations in those cases involve either (1) an ambiguity on the face of the bid (for example, a contradiction between unit and extended prices where the bidder is low on only one of the prices), or (2) the bidder claims, or the bidder's conduct evidences, mistake affecting its low bidder status, followed by an attempt to waive the claim and remain low by verification.

However, this factual situation does not involve any claim of error by Shirley or an apparent ambiguity in Shirley's bid from which that firm's competitive position could be manipulated. Rather, we merely have a discrepant bid price, which triggered a proper request for verification by the contracting officer, and an unequivocal verification. Furthermore, Shirley has consistently maintained that its bid was without error and the record does not disclose any objective evidence, other than the price discrepancy, which suggests that the bid was mistaken. Murphy's referral to an internal agency bid analysis--in which an agency contracting official notes that Shirley's item 4 bid is "obviously wrong," and that it is obvious that "the low bidder made some kind of error in his bid for bid item 4"--is of no consequence. The analysis bases the statements entirely on the price discrepancy and only concludes that verification should be obtained. Furthermore, merely bidding low or below cost is no basis to preclude an award. Universal Propulsion Co., B-186845, January 26, 1977, 77-1 CPD 59.

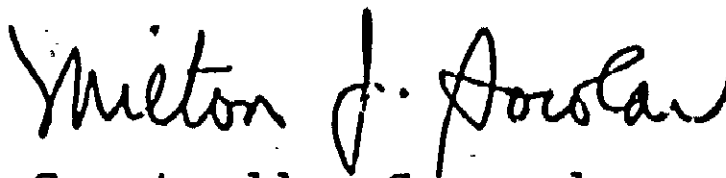
Adopting Murphy's argument would require a contracting officer suspecting the possibility of mistake to disregard routinely any subsequent verification unless the bidder convincingly proved that no mistake had been made. No such requirement is imposed under Defense

Acquisition Regulation (DAR) § 2.406-3(e)(1) (1976 ed.), which provides that a contracting officer shall consider a bid as originally submitted if a bidder verifies a bid. Moreover, our Office has held that a verification without substantiation is all that is required to accept the bid as submitted. 47 Comp. Gen. 617 (1968); Colton Construction Co., Inc., E-191575, July 6, 1978, 78-2 CPD 12; Yardney Electric Corporation, 54 Comp. Gen. 509, 511 (1974), 74-2 CPD 376.

Exceptions to this rule apply only in unusual circumstances such as occurred in Martin, or where enforcement of the contract by the Government would be unconscionable. See 53 Comp. Gen. 187 (1973). Since, as discussed above, the Martin situation is distinguishable, and the Shirley pricing does not evidence unconscionability, no unusual circumstances exist in the present case. Therefore, the contracting officer was correct in accepting Shirley's bid.

With regard to Murphy's contention that the Navy did not provide advance notice of the award to Murphy, there only is a requirement that the agency provide notification, not advance notification, in the face of an agency protest. See DAR § 2.407.8(b)(3) (1976 ed.).

We deny the protest in part, and we dismiss the protest in part.

for 
Comptroller General
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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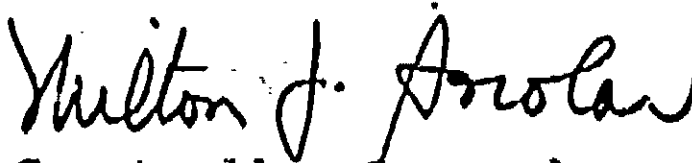
The Honorable Stan Parris
House of Representatives

Dear Mr. Parris:

We refer to your letter to our Office dated September 23, 1981, in regard to the protest of G.T. Murphy, Inc., concerning the award of a contract under solicitation No. N62477-79-B-0426 issued by the Department of the Navy.

By decision of today, copy enclosed, we have denied the protest in part and dismissed the protest in part.

Sincerely yours,

for 
Comptroller General
of the United States

Enclosure



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-204351

February 23, 1982

The Honorable John W. Warner
United States Senate

Dear Senator Warner:

We refer to your letter to our Office dated November 18, 1981, in regard to the protest of G.T. Murphy, Inc., concerning the award of a contract under solicitation No. N62477-79-B-0426 issued by the Department of the Navy.

By decision of today, copy enclosed, we have denied the protest in part and dismissed the protest in part.

Sincerely yours,

for *Milton J. Arolan*
Comptroller General
of the United States

Enclosure